RESERVED

COURT NO.3

Criminal Appeal No.93 of 2001

Balwant Singh & others .....Appellants

Vs.

State of Uttaranchal .....Respondents

....

Hon'ble Irshad Hussain, J:

All these three appellants were held guilty and convicted on the charges under sections 147 and 325 read with section 149 of I.P.C. and were sentenced to pay fine of Rs.2,000.00 each under the first count and to undergo imprisonment till rising of the court and to pay fine of Rs.3,000.00 each under the second count per judgment and order dated 14.03.2003 passed by Additional Sessions Judge, Haldwani district Nainital in session trial no.376 of 1993.

The facts of the case briefly stated are that on 11.04.1993 at about 7:30 P.M. the appellants alongwith four others intercepted informant Diwan Singh, his son Jitendra Singh and nephew Manoj Singh near government hospital of town Pratappur within the circle of P.S. Kaladhungi, district Nainital and assaulted them with clubs and iron rod causing them injuries. One of the miscreant also fired shot from pistol which did not hit any of them. Soon after the occurrence at 8:05 P.M. First Information Report was lodged by injured Diwan Singh and the three injured were sent for medical examination to P.H.C. Kaladhungi where they were examined for their injures. On

completion of the investigation of the case charge-sheet was submitted against these appellants and others under sections 147, 148, 323, 506, 307 of the I.P.C. The case was committed to the court of sessions and the trial of the appellants and others resulted in the conviction per judgment and order of the learned Sessions Judge as aforesaid.

The appellants did not admit the accusations of the prosecution and claimed that they were falsely implicated due to enmity.

In the trial prosecution examined all the three injured Diwan Singh P.W.1; Manoj Singh P.W.2; Jitendra Singh P.W.3; Medical Officer Dr. C.M.Chaturvedi P.W.4 ; Dr. P.C.Kapri, radiologist P.W.5; S.I. S.Anwar Ali P.W.6 and investigating officer S.I. Y.K. Puniya P.W.7 Diwan Singh P.W.1 narrated the facts pertaining to the incident in his evidence and proved written report Ext.ka.1. He testified that all the three injured including himself were assaulted by the assailants at the place of the occurrence. Other two injured P.W.2 and P.W.3 supported the prosecution version and corroborated the evidence of the P.W.1 about the occurrence. P.W.4 Dr. C.M. Chaturvedi proved that these three injured sustained injures of blunt object. He also poroved injury reports Exts.ka.2 to ka.4 of the three injured. On of the injury of Diwan Singh which was on the forearm was kept under observation and X-Ray was advised. As a result of the X-Ray fracture of shaft of ulna in the proximal half portion of the left fore arm was detected vide report Ext.ka.5 proved by P.W.5 Injury no.4 was thus found to be grievous in nature. Learned Sessions Judge on the basis of his appreciation of the evidence on record was of the

view that the evidence of all the three injured is reliable and that it is proved that they were way-laid at the place of the occurrence by the other four companions of the appellants, although the appellants were also member of the unlawful assembly in furtherance of the object of which the assault was made and injuries were caused to the victims. Considering the evidence to the effect that these appellants were members of the unlawful assembly, they were also held guilty and convicted as mentioned above. Other convicted accused have not filed any appeal.

Heard Sri P.S.Adhikari, learned counsel for the appellants and the learned A.G.A.

Learned counsel for the appellants drew attention to the evidence of the witnesses and submitted that the clam that these three appellants have not participated in assaulting the injured, indicate that their presence at the scene of the occurrence in the company of the actual assailants becomes highly doubtful and the learned Sessions Judge failed to take into account this aspect of the matter and wrongly held them guilty of the charges leveled against them. On the other hand the learned A.G.A. urged that the categorical and straightforward evidence of the witnesses is a guarantee of their truthfulness as they did not hesitate to admit that these appellants although members of unlawful assembly, took no active part in the assault of the victims and considering the fact that they were at the scene of occurrence alongwith others, it had rightly been held that they were also sharing the same intention as the others had in regard to the object of the unlawful assembly. Having considered the submission and the

evidence of the three injured, I find myself in agreement with the view as taken by the learned Sessions Judge that the evidence of all the three witnesses of the fact is reliable on the point of the participation of the appellants also in the occurrence with others, although they themselves did not cause hurt to the victims. Since they were sharing the same intention and were members of the unlawful assembly object of which was to assault the above named victims there was no escape from the conclusion that they have also committed the offences with which they were charged and were liable to be convicted accordingly. Considering this no interference in the judgment as regards the finding of guilt of these appellants is concerned, is warranted.

So far as the sentence part of the trial is concerned it has been argued that since the appellants have not taken part in actual assault of the victims a more lenient view in awarding the sentence should have been taken by the learned Sessions Judge. Considering the facts and circumstances of the case the submission of the learned counsel for the appellants cannot be said to be without substance and force and therefore, the sentence of fine awarded to these appellants need to be modified suitable. Instead of fine of Rs.2,000.00 each under section 147 of I.P.C., fine of Rs. 1,000.00 each and instead of fine of Rs.3,000.00 each under section 325/149 of I.P.C. fine of Rs. 1500.00 each shall be sufficient to meet the ends of justice.

In view of above this partly succeeds. Judgment and order dated 14.03.2001 holding the appellants guilty and convicting them under section 147 and section 325/149 of I.P.C. is hereby affirmed. The sentence awarded is modified and the appellants are

sentenced to pay fine of Rs.1,000.00 each under section 147 I.P.C. and in default they shall undergo rigorous imprisonment for six months and whereas under section 325/149 I.P.C. they are sentenced to pay fine of rs.1500.00 each and in default they shall undergo rigorous imprisonment for nine months.

On realisation of fine sum of Rs.1500.00 shall be paid as compensation to each of the three injured, viz., Diwan Singh, Manoj Singh and Jitendra Singh.

25.04.2003./B.

(Irshad Hussain, J.)